

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

CLEAN BURN FUELS, LLC

Debtor

Case No. 11-80562

Chapter 11

Motion To Return Goods For Credit And Cash Payment To Secured Lender

Now comes Clean Burn Fuels, LLC (the "Debtor"), and moves the Court pursuant to §546(h) of the Bankruptcy Code and Rule 9013 of the Federal Rules of Bankruptcy Procedure as follows:

1. On April 3, 2011 (the "Petition Date"), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code and an Order for relief was entered. The Debtor continues in possession of its assets and operates its business as a debtor-in-possession.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, and this matter is a core proceeding under 28 U.S.C. §157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.
3. Cape Fear Farm Credit, ACA, for itself and/or as agent/nominee for other lending institutions (collectively, the "Lender") under a certain Credit Agreement, asserts a first priority security interest and lien in or upon substantially all property of the Debtor's estate.
4. Lallemand Ethanol Technology ("LET") supplies liquefied yeast to the Debtor for use in connection with the production of ethanol. On 23 February 2011, LET delivered a total of seven totes of stabilized liquid yeast to the Debtor. LET invoiced the Debtor for a total of \$26,578.98. This represents the cost of six totes at \$4,080 each (the seventh tote was free) and \$2,098.98 for freight. The Debtor had paid for none of the totes.
5. Liquid yeast must be kept refrigerated until used and, further, must be used within three months of its delivery, after which it "goes bad." By the end of March, the Debtor had used two totes. Because of the suspension of production, the Debtor realized it would be unable to use the last five totes. Aware of the short shelf-life of the yeast, the Debtor, in a good faith effort to address the realities of the situation prior to the Petition Date, told LET it could have the five

totes back in return for a credit. When LET agrees to return of product in exchange for a credit, it normally charges a "re-stocking fee" equal to 30 percent of the returned product's cost.

6. LET dispatched a truck, operated by a third party trucking firm, to retrieve the yeast. The petition was filed on April 3, 2011, and on April 4, 2011, LET's truck driver was told that when he arrived at Clean Burn on Tuesday morning April 5, he should park the truck and call LET for further instructions before anything was done with the yeast. LET also informed Clean Burn's plant manager of these instructions to the driver. On the morning of April 5, having not heard from the truck driver as expected, LET called him and learned he was already back on the road hauling the yeast to an LET location. LET called its counsel to report this fact, and LET's counsel in turn reported this development to the Debtor's counsel.

7. LET's counsel and the Debtor's counsel agreed that due to the perishable nature of the liquid yeast, the estate would not benefit by a return of the goods and the situation should instead be remedied pursuant to Section 546(h). Taking into account the need for refrigerated storage of the yeast and its short and diminishing shelf life, LET, the Debtor, and the Lender agreed as follows subject to approval by the Court:

- a. The yeast shall be returned to LET pursuant to Section 546(h).
- b. LET will pay the Lender \$8,000 in cash for a release of its liens upon the yeast.
- c. The original retail value of the remaining five totes of yeast was \$20,400. The Debtor and LET agreed that this "starting" credit amount for the Debtor should be reduced to \$12,400 (by subtraction of the \$8,000 payment to the Lender). The Debtor and LET further agreed to recognize half of the 30 percent re-stocking fee that LET would normally have assessed, or \$3,060, as a set off to the credit. Thus, the final credit to the Debtor would be \$9,340, which will serve to reduce LET's general unsecured claim against the Debtor.

Wherefore, the Debtor prays the Court for the following relief:

1. Authorize the return of the liquid yeast to the Debtor, provided that LET pays \$8,000 to the Lender and credits \$9,340 against LET's unsecured claim against the Debtor.
2. Such other relief as the Court may deem necessary and proper.

RESPECTFULLY submitted on behalf of the Debtor, this the 12th day of April, 2011.

/s/ John A. Northen

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IN THE MATTER OF:

CLEAN BURN FUELS, INC.

DEBTORS

CASE NO. 11-80562

CHAPTER 11

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Motion to Return Goods for Credit and Cash Payment to Secured Lender**

1) was served by automatic electronic service on upon the following:

Michael D. West Bankruptcy Administrator PO Box 1828 Greensboro, NC 27402	Gregory B. Crampton Kevin Lamar Sink NICHOLLS & CRAMPTON, PA Obo Perdue BioEnergy, LLC 3700 Glenwood Avenue, Suite 500 Raleigh, NC 27612
Aaron M. Christensen Smith and Christenson, LLP Obo Lumbee River Electric Membership 5970 Fairview Rd, Suite 126 Charlotte, NC 28210	Paul A. Fanning Ward and Smith, PA Obo Capital Bank P O Box 8088 Greenville, NC 27835-8088
Benjamin A. Kahn Nexsen Pruet, PLLC Obo Cape Fear Farm Credit P O Box 3463 Greensboro, NC 27402	

and I have served the same by email or depositing a copy in an envelope bearing sufficient postage in the United States mail at Chapel Hill, North Carolina, addressed to the following parties at the following addresses which is the last address known to me:

Aeroglides Corporation Attn: Managing Agent 100 Aeroglides Drive Cary, NC 27511	Alfa Laval Attn: Managing Agent 2015 Spring Road Oak Brooks, IL 60523
Anixter, Inc. Attn: Managing Agent 250 Horizon Drive	Atlantic Services Group, Inc. Attn: Managing Agent 410 South Hill Street

Suite 300 Suwanee, GA 30024	Buford, GA 30518
FCI Attn: Managing Agent 2274 St. Paul's Road Raeford, NC 28376	First Insurance Funding Corp Attn: Managing Agent P O Box 66468 Chicago, IL 60666
H.S. Everest Corp. Attn: Managing Agent 3209 Barlow Court Wilmington, NC 28409	Harris Group Inc. Attn: Managing Agent 300 Elliott Ave W. Seattle, WA 98119
Hertz Equipment Rental Corporation Attn: Managing Agent 608 Middle Road Fayetteville, NC 28312	Insulating Services, Inc. Attn: Managing Agent 10709-H Granite Street Charlotte, NC 28289
Katzen International, Inc Attn: Managing Agent 2300 Wall Street Cincinnati, OH 45212	Lallemand Ethanol Technology Attn: Managing Agent 6120 W. Douglas Avenue Milwaukee, WI 53278
Hagemeyer North America, Inc. Attn: Managing Agent 11680 Great Oaks Way Alpharetta, GA 30022	Novozymes Attn: Managing Agent 77 Perry Chapel Church Road Franklinton, NC 27525
Piedmont Natural Gas Attn: Managing Agent PO Box 533500 Atlanta, GA 30353	S&ME Geotechnical Inc. Attn: Managing Agent PO Box 277523 Atlanta, GA 30384
Southeastern Electric Contractors, Inc. Attn: Managing Agent 1400 Gerrard Rd. Lavonia, GA 30553	Tencarva Machinery Company Attn: Managing Agent 1120 W. Butler Road Greenville, SC 29607
Uretek ICR, Mid Atlantic, Inc. Attn: Managing Agent P O Box 1070 Kernersville, NC 27285	RSC Equipment Attn: Managing Agent P O Box 36217 Charlotte, NC 28326-6217
United Rentals Attn: Managing Agent 432 Rankin Street Fayetteville, NC 28301	Peter Nils Baylor Nutter McClennen & Fish LLP Seaport West 155 Seaport Boulevard, Boston, MA 02210 Email: PBaylor@nutter.com

This the 12th day of April, 2011.

/s/ John A. Northen

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